in turn found it ready made in the English common law. Then the reasoning of the court ought to lie within clear, well-defined limits. The courts should try to find out the meaning this clause had when used in the English common law before its adoption in our constitutions. This presumptively is the meaning it has in any particular constitution. Now, it is believed that such an investigation will show that the explanation of the term "liberty" given in the fourth volume of this REVIEW[1] is the correct one. It was there said that "liberty" had a plain definite significance, — "that no freeman should be taken or imprisoned," — and nothing more. It is believed that the meaning of "property" is equally simple. In spite of the assertion that more is protected than the thing which is the subject of physical possession, it is improbable that such is the case. Probably property meant what most people not lawyers would say to-day it means; namely, chattels and interests in land either corporeal or incorporeal. No man was ever to be imprisoned, and no man was to have his horses or lands taken from him, except by due process of law. From this, which it is submitted is the original meaning, we have developed the idea that a law which fixes certain days on which a corporation must pay wages deprives it of its liberty and of its property.

Apart from the unsoundness of the position, the definition is so vague as to be useless as a practical working guide. This becomes apparent by reading the cases where such views are upheld. Nearly always the court attempts to fortify its position by arguments as to wisdom or expediency of the questioned legislation, — an assumption of legislative functions which can result in nothing but harm.

CONTRACTS — ACCEPTANCE OF OFFER. — The courts in England and, with the exception of Massachusetts, in the United States hold that a contract made by mail is complete and binding from the moment that the letter of acceptance is put in the post. It is for merchants rather than for lawyers to speak to the commercial expediency of this rule; but so far courts and law-writers have defended it on principle, and have therefore necessarily treated the Post Office as acting throughout the transaction for the original proposer. Mr. Justice Holmes in his Common Law (p. 306) says that "The offeree when he drops the letter containing the counter-promise into the letter-box does an overt act which by general understanding renounces control over the letter and puts it into a third hand for the benefit of the offerer, with liberty to the latter at any moment thereafter to take it." Mr. L. C. Innes, late judge of the High Court, Madras, says in a very careful and able article on the subject in the Law Quarterly Review, ix. 316, that "the offerer extends his personality through the post as his agent for the reception of the acceptance or refusal of the offer." And these may safely be accepted as examples of that view. But in the United States there is a serious difficulty, perhaps not generally understood, in accepting the premises of these arguments: the sender of a letter does not "renounce control" over it; the postal authorities do not act as the offerer's agent to receive the return message. For by Secs. 487, 488, and 489 of "Postal Laws and Regulations, 1893," it appears that the writer or sender may apply for a letter in the mails, and when satisfactory proof of identity has been furnished, may

[1] 4 Harvard Law Review, 365.

receive it back, and the passage is mandatory: "the postmaster" applied to "*shall* telegraph a request." "On receipt of such request the postmaster at the office of address *shall* return such letter to the mailing postmaster, . . . who will deliver it to the writer upon payment of all expenses." (For mention of a decision on these sections, see the American Lawyer, November, 1893, p. 8.) The result of this conflict of law and postal regulations is that the original proposer of a contract is bound from the time of acceptance; the acceptor is not bound in practice until his letter has been delivered. He may be bound in law, but if he gets his letter back and burns it up, he cannot be held in court. So for one party to the contract we have one rule, for the other the other. It may be urged that in fact men do not descend to such tricks as this. Most men do not; but it is the unscrupulous men seeking to avoid their liabilities who test the weak points of the law. Probably it is true that in a great majority of the cases the common rule does no harm; perhaps it is in those cases slightly for the convenience of those who deal through the mails. It does, however, do injustice, gross injustice, in such cases as *Vassar* v. *Camp*, 11 N. Y. 441, and it could be used to do great injustice by virtue of these postal regulations. The Massachusetts rule (*McCulloch* v. *Eagle Insurance Co.*, 1 Pick. 283) is tenable without assumptions incompatible with the lack of agency in fact, and does not do injustice. When the two rules come up to be argued upon the question of expediency, we shall get some light upon their practical convenience; but until then the law will rest on these two premises: that the sender renounces control over the letter, and that the Post Office acts as the agent of the proposer of the contract, each rendered untenable by the assertion and practice of the contrary by the Post Office.

The English cases are in Mr. Innes's article; the American are in Bennett's Benjamin on Sales (1892), pp. 65 ff.; and see Professor Langdell's article in 7 Am. L. Rev. 432; also *Patrick* v. *Bowman*, 149 U. S. 411.

LAIDLAW *v.* SAGE. — The case of *Laidlaw* v. *Sage*, which has just been decided by the Supreme Court of New York (New York Law Journal, vol. x. No. 44), arose upon a very extraordinary state of facts, and the opinion of the court (Van Brunt, P. J.) is suggestive in regard to more than one point.

The facts appearing upon the trial below were substantially these:

The plaintiff was a clerk who had called to transact business with Mr. Russell Sage. He was standing in Mr. Sage's office, waiting until Mr. Sage should finish talking with another caller who was then engaging his attention. This man, whose name was Norcross, had just handed Mr. Sage a letter, in which he threatened to drop a satchel full of dynamite, which he carried, on the floor, and so blow up the building, unless Mr. Sage would immediately give him $1,200,000. Mr. Sage, after reading the letter, answered Norcross evasively, and at the same time, according to the plaintiff's story, approached the plaintiff, and gently laying hold of him in such a manner as not to excite his suspicion, drew him into a position between himself and the dangerous visitor. Thereupon Norcross dropped his satchel. An explosion followed, by which the plaintiff was very seriously injured. This suit was brought to recover for these injuries, which the plaintiff claimed had been sustained in consequence of Mr. Sage's wrongful act.